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In re Application of
Lawrence R. McGee, et al.
Application No. 10/810,325
Filed: March 25, 2004
Attorney Docket No. 11134-123-999

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ON PETITION

This is a decision on the communication filed April 28, 2008 entitled "Second Petition to Revive Unintentionally Abandoned Application under 37 CFR 1.137(b)" which is being treated as a renewed petition to revive the above-identified application.

The petition is signed by a registered patent attorney or patent agent of record. However, in accordance with 37 CFR 1.34, the signature of Mr. David Pauling appearing on the correspondence shall constitute a representation to the United States Patent and Trademark Office that he is authorized to represent the particular party on whose behalf he acts.

The petition is **GRANTED**.

The application became abandoned as a result of a failure to file an appeal brief (and fee required by 37 CFR 41.20(b)(2)) within two (2) months of the Notice of Appeal filed June 15, 2007. A Notice of Abandonment was mailed on June 25, 2007. On October 16, 2007 a petition to revive under 37 CFR 1.137(b) was filed; however, the petition was dismissed in a decision mailed February 13, 2008. In response, on April 28, 2008, the present petition was filed.

The renewed petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a Request for Continued Examination (RCE), including the fee of \$8105 and the submission required by 37 CFR 1.114; (2) the petition fee of \$1,540; and (3) an adequate statement of unintentional delay¹.

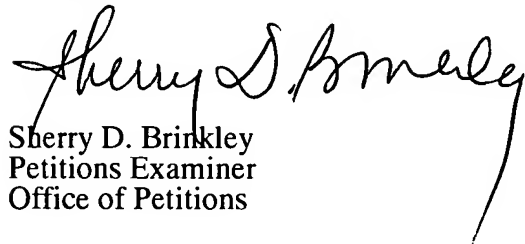
¹ 37 CFR 1.137(b)(3) requires a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. While it is not apparent whether the person signing the statement of unintentional delay was in a position to have firsthand or direct knowledge of the facts and circumstances of the delay at issue, such statement is being treated as having been made as the result of a reasonable inquiry into the facts and circumstances of such delay. See 37 CFR 10.18(b) and Changes to Patent Practice and Procedure; Final Rule Notice, 62 Fed. Reg. 53131, 53178 (October 10, 1997), 1203 Off. Gaz. Pat. Office 63, 103 (October 21, 1997). In the event that such an inquiry has not been made, petitioner must make such an inquiry. If such inquiry results in the discovery that it is not correct that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, petitioner must notify the Office.

Petitioner should not that no further petition fee is due on the renewed petition to revive under 37 CFR 1.137(b). Accordingly, the \$1,540 petition fee accompanying the present petition is subject to refund.

Any request for refund must included a copy of this decision and be mailed to Mail Stop 16, Director of the U.S. Patent and Trademark Office, P. O. Box 1450, Alexandria, VA 22313-1450 or faxed to the Customer Service Help Desk at (571) 273-6500.

The application is being referred to Technology Center AU 1625 for processing of the RCE and for appropriate action by the Examiner in the normal course of business on the amendment submitted in accordance with 37 CFR 1.114.

Telephone inquiries concerning this decision should be directed to the undersigned at (571) 272-3204. Inquiries relating to further prosecution should be directed to the Technology Center.

A handwritten signature in black ink, appearing to read "Sherry D. Brinkley", with a long, sweeping vertical line extending downwards from the end of the signature.

Sherry D. Brinkley
Petitions Examiner
Office of Petitions